



# **TOPICAL OUTLINE OF MASSACHUSETTS PREVAILING WAGE LAW**

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**Note:** Many of the letters included in this Topical Outline concern the appropriate occupational classification for various tasks performed on a work site. To make such determinations, the Division of Occupational Safety (DOS) consults the operative collective bargaining agreements for the municipality where the work will be performed. Other agreements covering different municipalities may result in a different determination of an occupational classification.

## **PREVAILING WAGE, Construction, M.G.L. c. 149, §§26-27D**

### **Applicability Determinations – In General**

Enforcement functions of the prevailing wage law are performed by the Office of the Attorney General; DOS retains sole authority to issue wage schedules and make applicability determinations.

Letter to Trager, Office of the Attorney General, May 4, 1994.

Deference to the Office of the Attorney General's interpretation of prevailing wage law, as the enforcement agency, is also appropriate.

Felix A. Marino Co. v. Commissioner of Labor and Industries, 426 Mass. 458 (1998) (dicta).

Awarding authority's failure to include the wage schedule issued by DOS in the bid package distributed to contractors may affect winning contractor's responsibilities under prevailing wage law.

Letter to Moschos, Mirick O'Connell, June 3, 1999.

### **Apprentices**

See "Deductions," below.

### **Archdiocese of Boston**

The Archdiocese is not subject to the requirements of the prevailing wage law. Prevailing wage schedules will not be issued for Archdiocese projects, though example schedules may be provided.

Letter to Rev. Boyle, Labor Guild, February 9, 2001.

### **Benefit Deductions**

See "Deductions," below.

### **Bituminous Concrete**

For the natural gas main installation project in question, the appropriate job classification for operation of a walk-behind pneumatic to cut bituminous or concrete pavement is *Pneumatic Drill/Tool Operator (Heavy & Highway)*. The appropriate job classification for operation of a gasoline-powered saw to cut bituminous or concrete pavement is *Jackhammer/Paving Breaker Operator*.

Letter to Langone, Langone Pipeline Utility, September 2, 2004.

Off-site work is not covered for bituminous drivers on projects for which a prevailing wage schedule dated on or after August 22, 2001 has been issued. On-site work is covered.

27A Decision, MHD Contract for Resurfacing and Related Work, District 2, August 21, 2001.

Construction Industries of Mass. v. Commissioner of Labor and Industries, 406 Mass. 162 (1989).

Dengen Policy, June, 1993. (Rescinded by 27A Decision issued on August 21, 2001.)

### **Blended Rate**

See “Overtime Pay/ Blended Rate,” below.

### **Boilers**

See “Temporary,” below.

### **Brick, Stone and Pre-Cast Concrete Paving**

For work performed in the City of Lowell, the Bricklayer and Allied Craftworkers’ collective bargaining agreement (between the Bricklayer and Allied Craftworkers on behalf of the Foxboro, Lowell, and Worcester Chapters and the Mason Contractors’ Association of Massachusetts, Inc.) establishes the craft jurisdiction for the *Brick/Stone/Artificial Masonry (Incl. Masonry Waterproofing)* occupational classification and wage rate. The Laborers’ collective bargaining agreement (between the Massachusetts Laborers’ District Council of the Laborers’ International Union of North America, AFL-CIO and the Labor Relations Division of the Associated General Contractors of Massachusetts, Inc. and the Building Trades Employers’ Association of Boston and Eastern Massachusetts, Inc.) establishes the craft jurisdiction for the *Laborer: Mason Tender* occupational classification and wage rate.

Letter to Souza, City of Lowell, September 8, 2004.

See “Overlapping Craft Jurisdiction,” below.

### **Bridges/Tanks Painters**

The occupational classification of “Painter (Bridges/Tanks)” shall be used for the following tasks on covered public works construction projects:

- The erection and dismantling of scaffolding, rigging, and containment for bridge and tank painting operations;
- Surface preparation, including the removal of all types of paint, on bridges and tanks;
- The application of paint on bridges and tanks;
- The clean-up of debris resulting from paint removal operations on bridges and tanks.

See also: Notice to Awarding Authorities and Contractors Concerning the Removal and Application of Paint on Bridges and Tanks, issued January 8, 2004.

### **Cable Communication Line Installation**

Road work such as underground installation of cable communication line for private use, similar to utility “cuts”, may not be subject to M.G.L. c. 149, §§26-27H.

Letter to Early, Early and Sons; and Marino, Felix A. Marino, Co., August 24, 1999.

See “Utility Work-Road Work Performed in Connection with,” below.

### **Cable Pulling**

Prevailing wage rates are required to be paid to all workers who install voice, data, and video cables as components of permanent building systems on all public works construction and alteration projects for which a wage schedule is issued on or after February 4, 2002.

Letter to Lamarre, Office of the Attorney General, February 4, 2002.

### **Carpenters - Classification**

Workers install and bolt freestanding wardrobe and athletic lockers onto concrete bases and also install and bolt heavy-duty corridor lockers to wood bases and wall fall squarely under the occupational classification of Carpenter.

Letter to Zarbo, Office of the Attorney General, September 24, 2002.

### **Carpenters’ Wood Frame Classification**

Alternate “wood frame” carpenter classification established for certain projects based on specific criteria.

Letter to Arevalo, Office of the Attorney General re: West Tisbury Elementary School, April 10, 1995 (pertains to outdated collective bargaining agreement no longer in effect).  
Letter to Rodman, Stoneman, Chandler & Miller, March 26, 1999 (regarding amendment of agreement).

See footnote on prevailing wage schedules.

### **Change Orders**

It is clear from the plain language of G.L c. 149, §27, that the prevailing wage schedule issued by the commissioner at the outset of the project is the schedule that remains in effect for the duration of that project. This same prevailing wage schedule also establishes the minimum wage rate for change order work, which constitutes an amendment to the original construction contract (as opposed to work that is not incidental to the original contract scope that would constitute a



new contract and presumably require competitive procurement and a new prevailing wage request).

Letter to Breck, City of Springfield Law Department, February 8, 2005.

### **Charter Schools**

Charter schools are public schools, pursuant to M.G.L. c. 71, §89, and are subject to the prevailing wage law.

Letter to Oppenheimer, Pioneer Valley Building and Construction Trades Council, March 3, 1997.

Prevailing wage not applicable to construction of Sabis International Charter School, a Commonwealth charter school constructed with private money on private property.

Letter to Anthony Penski, Office of the Attorney General, January 5, 2000 (incorrectly dated as January 5, 1999).

Prevailing wage not applicable to the renovation of a private building to be occupied by the Holyoke Community Charter School under a lease arrangement with the building's owner, a private entity.

Letter to Goldman, Holyoke Community Charter School, May 31, 2002. (A subsequent transfer of ownership of the property to Holyoke Community Charter School resulted in prevailing wage rates being applicable to the project.)

### **Clean-up of Construction Job**

Prevailing wage law applies to all aspects of final clean-up of construction job.

DLI Notice to Awarding Authorities.

### **Collective Bargaining Agreements**

Despite little union employment and lower average wages rates in the area, wage rates set based on legitimate collective bargaining agreements shall prevail.

27A Decision, Dennis Yarmouth Regional School and Falmouth, February 15, 1994.

### **Commissions**

Where enabling act for the Lynn Water and Sewer Commission declares it to be an agency of the Commonwealth, prevailing wage law applies to the same extent as it does to any other agency of the Commonwealth.

Letter to Lynn Water and Sewer Commission, October 22, 1996.

The Cambridge Public Health Commission's enabling legislation, Chapter 147 of the Acts of 1996, provides that the Commission is subject to M.G.L. c. 149, 26-27F.

Letter to McCarthy, McCarthy, Bouley & Barry, February 25, 2002.

Martha's Vineyard Commission a public body subject to the prevailing wage law.

Letter to Simmons, Martha's Vineyard Commission, July 17, 1995.

The Boston Public Health Commission is subject to the prevailing wage law.

Letter to Edwards, Boston Public Health Commission, October 6, 2003.

### **Concrete Forms and Concrete Installation**

See "Overlapping Craft Jurisdiction," below.

### **Concrete Testing**

Prevailing wage law applies to concrete testing because it is an essential part of the pouring or installation of the concrete.

Letter to Zarbo, Office of the Attorney General, June 4, 2002.

### **Crushed Stone**

See "Gravel and Fill," below.

### **Day Rates**

Day rate compensation in three scenarios submitted for consideration is permissible as employee receives the applicable prevailing wage for all hours worked and overtime in accordance with state overtime law. Employer is still obligated to track actual hours worked and maintain and submit payroll records in accordance with M.G.L. c. 149, §27B.

Letter to Sharp, Jackson Lewis LLP, September 8, 2003.

### **Deductions**

Deductions from prevailing wage rate issued under sections 26 and 27 are limited to employer's contributions to health/welfare, pension, annuity or supplemental unemployment insurance plans.

Letter to Kammerer, Ericsson, Inc., October 5, 1989.

DOS does not make a determination as to the validity of a particular plan.

Letter to Higgins, Patterson Smith Associates, December 19, 1997.

Employers may use any method they wish for calculating hourly contributions to health and welfare plans as long as those contributions do not exceed the cost of the plan.

Letter to Beeman, Associated Builders & Contractors, October 2, 2002.

Deductions from specified prevailing wage rate are limited to employers contributions to health/welfare, pension, annuity or supplemental unemployment insurance plans.

Hopwood, Heafitz & Hopwood, October 5, 1989.  
Other letters on file.

Employees are limited to certain deductions from the prevailing wage rate; only health/welfare, pension, annuity or supplemental insurance plans.

Letter to J. Higgins, Patterson Smith Associates, December 19, 1997.

When calculating the appropriate gross wage for apprentices on a prevailing wage project, employers should first deduct any employer-paid health, welfare, pension, or supplemental unemployment benefits, and then apply the appropriate apprentice step.

Letter to Meleski, Associated Builders & Contractors, July 14, 2000.

Employer contributions to bona fide 401k plans are permissible “pension” deductions under the prevailing wage law. Employer’s administrative costs associated with pension plans may not be deducted from employees’ wages under the prevailing wage law. ERISA approved 401k plans are considered bona fide plans for purposes of the prevailing wage law.

Letter to Hopwood, August 28, 2001.

“Hour banks” administered by third parties, where amounts contributed on behalf of a specific employee for health insurance cannot be redistributed to any other individual (and if that employee terminates, that employee is entitled to all sums deposited), comply with the prevailing wage law. The timeliness of such payments is governed by M.G.L. c. 149, §148, a section interpreted and enforced by the Office of the Attorney General.

Letter to Baragona, Associated Prevailing Wage Contractors, Inc., September 8, 2003.

### **Derelict Vessels, Removal of**

The removal of derelict vessels, including demolition, site preparation, excavation, site restoration, and other related work in Gloucester Harbor is subject to the prevailing wage law.

Letter to Vine, Nucci-Vine Associates, January 29, 2001.

### **Dismantling Work**

Dismantling of steel ventilation fans and doors which are coated in lead paint and the dismantling of steel reinforced walls which are do not contain lead paint, falls squarely within the Laborers occupational classification and not the deleaders occupational classification.

Letter to Zarbo, Office of the Attorney General, June 21, 2002.

### **Districts**

A “district”, as mentioned in M.G.L. c. 149, §26, may be subject to prevailing wage law if deemed to be a public authority by its enabling act.

Letter to Tallberg, Sherwood Forest Road District, March 26, 1996.

(Note: Text of Section 26 treats all districts like the Commonwealth for purposes of determining whether prevailing wage applies, and does not distinguish between those whose enabling legislation deems them a public authority and those whose enabling legislation does not.)

### **“Down-time”**

Employees experiencing “down time” while present at public works construction projects must be paid no less than prevailing wage rate corresponding with activity in which they are engaged. If employees are idle but not released by employer from the work site, they must be paid no less than lowest prevailing wage rate among occupational classifications applicable to the project.

Letter to Montenegro, Independent Asphalt Corp., May 17, 2000.

### **Drawbridge Operators**

Where regular drawbridge operators will be replaced by operators employed by a contractor during a reconstruction/rehabilitation project, contractor’s operators subject to the prevailing wage law.

Letter to O’Reilly, Construction Industries of Massachusetts, Fore River in Quincy, December 3, 1997.

### **Duration of Applicability of Wage Schedule**

Once prevailing wage schedule, including accompanying apprentice ratio sheet, has been issued for a particular project, it remains in effect for the duration of the project.

Letter to Richards, Griffin Electric, July 10, 1998.

Letter to Oakes, Town of Needham, November 1, 1999.

## **Electrical Equipment Testing**

The testing of electrical distribution equipment during construction and alteration projects requires payment of prevailing wage rates.

Letter to Isaac, Electrical Engineering & Service Co., Inc., February 25, 2003.

Letter to Isaac, Electrical Engineering & Service Co., Inc., May 2, 2003

Testing in connection with non-functioning electrical equipment, see Letter to Nicalek, Renaud Electric & Communications, Inc., May 17, 2005.

## **Electricians**

Repairs to electrical fixtures in public building subject to prevailing wage law because almost all work performed by electricians constitutes “additions to or alterations of” public works.

Letter to F.X. Flaherty, Office of the Attorney General, Barnstable County IFB, August 12, 1999.

Letter to Troy, Barnstable County Counsel, November 28, 2001.

## **Electrostatic Painting**

Electrostatic painting of public buildings or any structural assembly subject to the prevailing wage law; electrostatic painting of movable furniture not subject because not a “public building” or a “public work.”

Letter to Crutchley, Brush Strokes, Etc., February 28, 1996.

## **Emergency Projects-Environmental Cleanup**

See “**Environmental Clean-up**,” below.

## **Energy Retrofit Programs**

Energy retrofitting programs may be subject to the prevailing wage law depending on facts of arrangement.

DLI Memo to Cities and Towns, September 29, 1995.

Where new, efficient electrical devices will be installed in a public building but where cost will ultimately be borne by a private utility and no other recouping of costs will be assessed against public agency, prevailing wage law does not apply. However, facts of each particular arrangement are determinative.

Letter to Smola, Palmer Public Schools, October 10, 1995.

Energy retrofitting program where public entity will not expend any funds not subject to the prevailing wage law.

Letter to McClave, Norton Housing Authority, May 23, 1996.

Letter to Brennan, Boston Housing Authority, July 20, 2001.

## **Environmental Clean-up**

Many, but not all, activities associated with environmental clean-up or hazardous waste clean-up covered by the prevailing wage law, including emergency oil spill cleanup and containment, hazardous materials emergency response, asbestos containment and removal, soil removal, tank removal, fence installation and repairs, installation and repair of groundwater recovery and treatment systems, soil vapor recovery systems, air sparge systems, and landfill cap systems, and work incidental to the installation of treatment systems, such as test borings or demolition of structures.

Environmental clean-up activities not covered by prevailing wage law include drum pick-up and disposal, sample collection, sample analysis, site security, operation and maintenance of groundwater recovery and treatment systems, soil vapor recovery systems, air sparge systems, and landfill cap systems.

As general rule, installation of pollution remediation equipment and excavation of contaminated soil subject to the prevailing wage law. However, operation and maintenance of same equipment, once installed, not subject to prevailing wage law.

Letter to Moreschi, Office of the Attorney General, DEP Emergency Response and Site Support Services, May 20, 1997.

## **“Established” Wage Rates**

No specific frequency or volume of unionized work required to meet definition of term “established” wage rate or wage rates.

27A Decision, Town of Falmouth Department of Public Works on Behalf of Southeastern Massachusetts Consortium, Contract for Bituminous Concrete Repair of Utility Trenches, 1995.

Existence of collective bargaining agreements with certain municipality included in territorial jurisdiction, and evidence of work performed in area under terms of collective bargaining agreements, supported DLI’s determination that wage rates “established” in municipality.

27A Decision, Dennis-Yarmouth Regional School District, et al., 1994.

## **Field Engineers**

Field engineer classifications perform many services common to typical building construction

project, including establishing benchmarks for foundations, right of way clearances, grades and elevations.

Letter to Yodanis, Foundation for Fair Contracting, May 12, 1999.

Field engineers engaged in pre-construction surveys, as well as engineers hired to perform quality control work (i.e. work to generate measurements and data to be used by management consultant for quality control purposes and to ensure that work was being performed in compliance with construction contract) not subject to the prevailing wage law.

27A Decision, Central Artery/Tunnel Project, July 1995.

Field engineers' pre-construction activities not subject to the prevailing wage law. Construction layout activities, such as establishing grid lines, checking and measuring concrete forms to ensure that they are plumb, and determining proper elevation of roofing-type structures for concrete slabs, are subject to the prevailing wage law.

Letter to Lancome, ICF Kaiser, MWRA Deer Island, July 19, 1996.

Letter to Lancome, ICF Kaiser, MWRA, December 19, 1997.

Where DOS wage schedules follow classifications for Field Engineers: Instrument Person, Rod Person, and Chief of Party by qualifying statement "Bldgs. Only", applicability is limited to work performed on buildings alone, not on work performed adjacent to, or apart from, buildings. Where classification is followed by qualifying statement "Bldgs & Site", applicability extends beyond buildings to include other work on site such as parking lots, roads, walkways, landscaping, fencing, etc.

Letter to Wayne, Hinckley Allen & Snyder, October 22, 1999.

Up to May 12, 1999, DOS wage schedules contained erroneous qualifier for categories of Field Engineer of "Bldgs. Only". Since May 12, 1999, DOS has corrected this error and issued rate schedules for field engineers with proper qualifier, "Bldg, Site, Hvy Const."

Letter to Tufano, November 4, 1999.

Clarification and discussion of applicability to particular categories of work; clarification of occupational classifications listed on wage schedules.

Letters to Wayne, Hinckley Allen & Snyder, various letters

Letters to O'Reilly, Construction Industries of Massachusetts, various letters.

Other letters on file.

As of early 1999, DOS has modified field engineer classification to include heavy construction in addition to building and site work, to conform wage rate schedules to changes in collective bargaining agreement of International Union of Operating Engineers, Local 4E.

Letter to O'Reilly, Construction Industries of Massachusetts, November 4, 1999.

Workers who use a transit, level, and total station to perform surveying duties during construction are classified as Field Engineers.

Letter to Goulet, December 5, 2002.

### **Fire Alarms/Sprinklers**

Telecommunications technician job classification may be used to cover repair, maintenance and operation of fire alarm systems. Electrician job classification is used for installation.

Letter to W.J. Griffin, appeal of M. Monahan, IBEW Local 103, April 18, 1997.

Repair of fire alarm systems is subject to the prevailing wage law. Testing and inspection of fire alarm systems not related to an addition or alteration to the public work is not subject to the prevailing wage law.

Letter to Countermarche, Data Fire Systems, September 1, 1999.

Letter to Moschos, Mirick O'Connell, MassPort, May 27, 1999.

Testing of fire sprinkler systems in connection with an installation or repair project requires the payment of prevailing wage rates. However, prevailing wages are not required for routine testing not associated with installation, alteration, or repair work.

Letter to Smith, H.F.P. Corporation, May 13, 2005.

### **Fuel Delivery**

Contract for delivering fuel to construction site not covered by the prevailing wage law.

Letter to Truax, MWRA, Deer Island Project, April 17, 1996.

### **Funding**

#### **Betterment Assessments - Private Development, Town Hires Contractor**

Residential construction work performed by contractor hired by a town and financed by betterment assessments not subject to the prevailing wage law.

Letter to Veara, Town of Brewster, August 25, 1998.

#### **Completion Bond Funding - Municipality Hires Contractor**

Work performed by contractor hired by town through funds collected from a privately-posted completion bond to complete work on private residential development where original contractor went bankrupt before completing the work but where no public money being expended not subject to prevailing wage law.



Letter to Farren, Michael's Lane Subdivision, Templeton, March 28, 1996.

Work performed by a contractor hired by a town to complete work on private residential development where the original contractor went bankrupt before completing work but where no public money being expended (funding provided by the previous contractor's surety) not subject to the prevailing wage law.

Letter to Bobrowski, Massapoag Estates, Foxborough, September 9, 1997.

Work performed by a contractor hired by a town to complete work of original contractor who defaulted on completion obligation, funded by funds set aside by original contractor in escrow account not subject to the prevailing wage law.

Letter to Niall, Templeton, September 7, 1999.

Letter to Bobrowski, Hamilton Estates, February 27, 2003.

### **Disaster Recovery Funds**

Project funded by disaster recovery funds subject to the prevailing wage law.

Letter to Boulay, Civil Defense Agency, July 8, 1988.

### **Grant Funds**

Grant funds provided to private, non-profit corporations pursuant to Chapter 236 of the Acts of 2000 not subject to the prevailing wage law; no public awarding authority involved, no public property involved.

Letter to Kelliher, Murphy, Hesse, Toomey & Lehane, LLP, Manet  
Community Health Ctr., July 3, 2001.

Letter to Broad, Berkshire South Reg. Community Health Ctr., July 10, 2001.

Grant funds provided to New England Farm Workers' Council, a private, non-profit corporation not subject to the prevailing wage law; no public awarding authority involved, no public property involved.

Letter to Taylor, New England Farm Workers' Council, May 20, 2002.

Grant funds provided to City of Holyoke for the demolition of four buildings owned by the developer is subject to the prevailing wage law.

Letter to Sinclair, City of Holyoke Office for Community Development, April 25, 2002.

### **HUD Funding - Private Project**

Development of private project using public funds (HUD grants) not subject to prevailing wage law.

Letter to Young, Union Street Community Center, Lynn, July 26, 1996.  
Letter to Conrad, Nauset Lighthouse Preservation Society, August 15, 1996.

### **HUD Funding - Public Project**

Certain HUD-assisted housing authority construction projects may not be subject to the prevailing wage law.

Memo to Tempesta, EOCD, May 31, 1995.

### **Private Contractor, Private Land - Agreement to Redevelop Public Work**

Where contractor will develop land purchased from a town, construction work not subject to the prevailing wage law. However, where, as condition of the sale, same developer required to redevelop a public parking lot, that portion of the work subject to prevailing wage law.

Letter to Wheeler, Town of Hamilton, May 22, 1998.  
Letter to Pelosi, EOEA, Allens Pond, South Dartmouth, January 10, 1997.

### **Private Contractor, Public land---Agreement to Redevelop Public Work**

Town enters into licensing agreement with the donor in which the donor will be responsible for construction and upon completion, the finished building is gifted back to the town, is not a “public works” project subject to M.G.L. 149, §§26-27H.

Letter to Hale, Town of Shrewsbury, October 18, 2001

### **Private Funds - Landfill Closure**

Accelerated closure of landfill, where non-municipal waste will be accepted, and no public money will be expended, not a “public work” for the purpose of section 26-27.

Letter to Myer, Needham Landfill, January 19, 1996.  
Letter to Bean, Greenfield Landfill, January 19, 1996.  
Letter to Briggs, Williamstown Landfill, April 8, 1996.

### **Private Funds-Land Leased from Public Agency**

Private development project on land leased from public agency not subject to prevailing wage law.

Letter to Salomon, Eggleston Square Development, Roxbury, October 10, 1995.

### **Private Funds-The Sturgis Library**

Prevailing wage law does not apply to the Sturgis Library, a private non-profit organization.

Letter to Lindquist, The Sturgis Library, June 21, 2002.

### **Private Funds-Western Massachusetts Regional Library**

Private, not-for-profit corporation is neither an agency of the Commonwealth nor a county, town, authority, or district and not subject to the prevailing wage law.

Letter to Ramsay, Regional Administrator, WMRLS, Inc., March 14, 2002.

### **Public Funds - Construction on Private Land**

Publicly funded construction work on private land not “public works” construction project subject to the prevailing wage law.

Letter to Pelosi, EOE, Allens Pond, South Dartmouth, January 10, 1997 (Allen Pond)

### **Public Funds---Construction on Public Land**

Publicly funded construction of a home on public land by the Plymouth Redevelopment Authority to later be sold, is a public works construction project subject to M.G.L. c. 149, §§26-27H.

Letter to Battista, Plymouth Redevelopment Authority, May 2, 2003.

### **Public Funding - Infrastructure of Private Development**

Private industrial developments not subject to the prevailing wage law, even though public body will finance some infrastructure improvements for exclusively private benefit.

Letter to Powers, Toys “R” Us, Westfield, December 3, 1997.

### **Public Funding (Partial) - Erosion Control Project Performed by Private Utility**

Erosion control project performed by private utility companies, where work partially funded by public money, not subject to the prevailing wage law.

Letter to Sullivan, Franklin County, Connecticut River, September 9, 1996.

### **Public Funds - Private Residences**

Construction of private residences funded by public agency(ies), not subject to prevailing wage law.

Letter to Haddad, Town of Adams, April 5, 1999.

Letter to Perkins, Rural Development, Inc., April 6, 2000.

### **State and Private Funding - Publicly Owned Building**

Rehabilitation of publicly owned building funded by the Mass. Historical Commission, an agency of the Commonwealth, and private donations, is public works construction project subject to prevailing wage law. Certain other items of work not part of primary contract for construction, voluntarily performed by local citizens using construction materials paid for exclusively using private funds, not subject to prevailing wage law.

Letter to Pacun, Capt. David T. Basset House, Chatham, January 25, 1996.

### **State Assistance - Title V Septic Systems**

Work funded using revolving loan and financial assistance program funded by state for private homeowners to improve non-complying septic systems, even though in some cases a municipality may hire contractor directly to perform septic system improvements on private property, not subject to the prevailing wage law.

Letter to Tempesta, EOCD, Title V Septic Systems, September 29, 1995.

### **Warranty Work**

Warranty work, in some cases, not covered by the prevailing wage law.

Letter to White, City of Lynn, July 21, 1994.

Roofing contractor's replacement of membrane under provisions of manufacturer's warranty not subject to the prevailing wage law.

Letter to White, City of Lynn, July 21, 1994.

### **Gate Attendant Operator at Transfer Station**

Gate attendant who checks incoming vehicles for current permits and directs customers to appropriate container for waste and recyclable disposal not subject to the prevailing wage law.

Letter to Kennedy, October 2, 2002.

### **Generators**

Work to emergency electrical generators that are part of a public building, and not portable, is subject to the prevailing wage law if it involves alteration of the public work. Testing is also covered when conducted as part of an alteration project.

Letter to Bosco, Office of the Attorney General, September 17, 2001.

### **Geotechnical Work/Soil Boring Preliminary to Construction**

Certain geotechnical work done “preliminary to a construction project” subject to prevailing wage law.

Letter to Noble, Hill & Barlow, March 21, 1995.

### **Glass Window Pane Replacement**

Contract for the replacement of glass windows in county prison subject to prevailing wage law.

Letter to Flaherty, Office of the Attorney General, Suffolk County Jail, September 10, 1999.

### **Glaziers v. Laborers – Classification**

All persons performing installation work associated with pre-glazed windows, curtain walls and aluminum framing on public works, should be classified as “Glazier” workers. Work involving the unloading, handling, and distribution of all materials associated with pre-glazed windows, curtain walls, and aluminum framing appear to fall within an area of overlap between the glazier and laborers’ unions.

Letter to Zarbo, Office of the Attorney General, August 15, 2002.

See “**Overlapping Craft Jurisdiction**,” below.

### **Grass Mowing**

See “**Landscape Maintenance**,” below.

### **Gravel and Fill**

In absence of strong evidence that crushed stone is not gravel, DOS will consider hauling crushed stone as gravel for purpose of prevailing wage law.

Letter to Wayne, Hinckley, Allen & Snyder, February 3, 1998.

Truck drivers who move excavated material at a public works construction site and truck drivers who deliver stone and gravel to a public works construction site, are covered by the prevailing wage law.

Letter to Rafferty, Fay, Spofford, & Thorndike, February 24, 2003.

### **Hazardous Waste Removal**

See “**Environmental Clean-up**,” above.

### **Heating System Repairs**

The repair of heating systems is covered by the plumber and pipefitter job classifications.

Letter to Adams, Scituate Schools, August 30, 1996.

Installing parts, fixing pipe, and conducting other activities that alter existing heating systems whether covered by a maintenance contract or not, are subject to M.G.L. c. 149, §§26-27H.

Letter to Holloway, George T. Wilkinson, Inc., November 15, 2002

Letter to Holloway, George T. Wilkinson, Inc., February 27, 2003

### **HVAC Duct Work – Classification**

The handling and assembly of duct work installed as part of a permanent building system is within the jurisdiction of the “Sheetmetal Worker” occupational classification (also the “HVAC (Ductwork)” occupational classification).

Letter to Trager, Office of the Attorney General, May 24, 2001.

### **HVAC Electrical Controls – Classification**

“Electrician” proper classification for installation of heating, ventilation, and air conditioning (HVAC) controls at public works construction projects.

Letter to Griffin, Wayne J. Griffin Electric, Inc., May 17, 2000.

Letter to Trager, Office of the Attorney General, January 2, 2002

### **HVAC Testing and Balancing**

Testing and balancing of HVAC systems, when performed as part of a construction or installation project, covered by the prevailing wage law.

Letter to Higgins, Attleboro Schools, October 29, 1997.

Letter to Camerlango, E. Amanti & Sons, November 12, 1999.

Letter to Corlin, Tekon-Technical Consultants, Inc., April 5, 2000.

Letter to Gillespie, Trane Company, August 24, 2005.

Cleaning and testing of HVAC equipment, see Letter to Nicalek, Renaud Electric & Communications, Inc., May 17, 2005.

### **HVAC Testing and Balancing - Classification**

Testing and balancing of air handling and duct work, when conducted as part of public works construction or alteration project, classified as “Sheet Metal Worker” work. Testing and balancing of hot water-based heating systems, when conducted as part of public works construction or alteration project classified as “Pipefitter” work.

Letter to M. Camerlengo, E. Amanti & Sons, Inc., May 19, 2000.

### **Infra-Red Bituminous Concrete Repair**

DOS need not create a separate job classification for workers who use an infra-red heater in the process of patching roads with bituminous concrete; that activity is covered by the existing laborer classification.

27A Decision, Town of Falmouth, 1995.

Letters to Marino, Felix A. Marino, Co., September 21, 1994.

### **Insulators**

The “insulator” classification on prevailing wage schedules applies to persons applying insulating materials on mechanical systems (pipes, tanks, etc.).

Letter to Petrucelli, Associated General Contractors, April 16, 1996.

### **Insurance Work**

Work funded by insurance proceeds covered, in some cases, by the prevailing wage law.

Letter to Sacchetti, Duxbury, May 13, 1994.

### **Ironworkers v. Laborers – Classification**

Ironwork and associated activities such as erection, construction of iron and other metals, loading and unloading of iron and other metals at ironwork site, as well as grinding, burning, welding, and bolting of iron and other metals properly classified as “Ironworker” work.

Letter to Long, Buonopane, April 26, 2000.

See “Overlapping Craft Jurisdiction,” below.

### **Laborers - Classification**

Dismantling of steel ventilation fans and doors which are coated in lead paint and the dismantling of steel reinforced walls which do not contain lead paint, falls squarely within the Laborers occupational classification and not the deleaders occupational classification.

Letter to Zarbo, Office of the Attorney General, June 21, 2002.

See “**Overlapping Craft Jurisdiction**,” below.

See also Memorandum of Understanding Between The Laborers’ International Union of N.A. and The United Union of Roofers, Waterproofers and Allied Workers, dated September 8, 2003.

### **Landscape Maintenance**

Certain landscaping activities not associated with construction or alteration, specifically mowing and trimming grass and removing fallen leaves, not “construction of public works” and therefore not covered under section 26 of the prevailing wage law. (Note: Decision did not address section 27F.)

Landscaping consisting of grading of soil and installation of trees, shrubs, grass and other plants on publicly owned grounds may be considered construction of public works.

27A Decision, Town of Framingham, July 25, 1995.

### **Leased Office Space - Landlord’s Improvements**

Landlord’s improvements to office space leased by a public agency not subject to the prevailing wage law given certain circumstances.

Letter to McGrane, Office of the Attorney General, August 7, 2001.

### **Line Painting**

Clarification of proper occupational classification to be paid to persons who mark lines and apply paint to roads, highways, parking lots, playgrounds, etc.

Letter to Wayne, Hinckley, Allen & Snyder, November 12, 1999.

Line painting and application of traffic markings properly classified as Laborers’ work.

Letter to O’Reilly, Construction Industries of Massachusetts, June 13, 2000.

### **Locker Installation-Carpenter**

Workers install and bolt freestanding wardrobe and athletic lockers onto concrete bases and also install and bolt heavy-duty corridor lockers to wood bases and wall, fall squarely under the occupational classification of Carpenter.

Letter to Zarbo, Office of the Attorney General, September 24, 2002.



## **Maintenance v. Repair**

DLI has authority to construe term “alteration” in the definition of “construction” set forth at M.G.L. c. 149, §27D to include repairs to public buildings.

27A Decision, Appeal of Local 3 of wage rates and classifications for Maintenance/Repair Contract for Boston Public Library, 1988.

“Parts replacement” is tantamount to a repair and is therefore subject to prevailing wage law.

Letter to Moschos, Mirick O’Connell, May 27, 1999.

Letter to Holloway, George T. Wilkinson, Inc., November 15, 2002.

Letter to Isaac, Electrical Engineering & Service Co., Inc., February 25, 2003.

Letter to Isaac, Electrical Engineering & Service Co., Inc., May 2, 2003

Maintenance activities that result in additions to or alterations of public works constitute construction of public works for purposes of M.G.L. c. 149, §§26-27.

Letter to Courtemarche, Data Fire Systems, Inc. September 1, 1999.

Letter to Holloway, George T. Wilkinson, Inc., November 15, 2002.

Letter to Isaac, Electrical Engineering & Service Co., February 25, 2003.

Letter to Isaac, Electrical Engineering & Service Co., May 2, 2003

## **Materialmen**

Laborers working at a contractor’s yard loading and unloading materials and/or equipment for use in the construction of a public construction project and Laborers working in a contractor’s yard processing and manufacturing materials and/or equipment to be used at a public construction project are not subject to prevailing wages. Letter to Shannon, January 22, 2002.

Letter to Shannon, January 22, 2002.

Materialmen are not covered by the prevailing wage law unless they participate in the installation of materials at the worksite.

Letter to Maloney, Office of the Attorney General, November 1, 1999.

## **Mechanics**

“Mechanic” classification applies to persons who work on equipment at public works site in order to assemble, adjust, disassemble, or maintain proper functioning of equipment, such as oilers. If equipment is not functioning, regardless of whether it is located at a public works site, prevailing wage rates need not be paid to the mechanic who performs repairs to return equipment to service.

Letter to Maloney, Office of the Attorney General, November 1, 1999.

### **Modular Work Stations**

Installation, repair or disassembly of modular work stations cannot be considered a construction project and are not subject to sections 26 -27D. Any alteration to public buildings in connection with the installation, repair, or disassembly of modular work stations would, however, require the payment of prevailing wage.

Letter to Tempesta, DHCD, October 4, 1999.

### **Municipal Employees**

Generally speaking, the prevailing wage law does not apply to public employees unless (1) they are involved in the “construction, addition to or alteration of public buildings” and (2) the project has been funded by a “special appropriation of more than on thousand dollars.” (letter does not address work of public employees under section 27F)

Letter to Canavan, City of Everett, May 18, 1999.

Letter to D’Astous, Chester Municipal Light Department, September 5, 2001.

In the absence of a “special appropriation”, cities and towns are not required to pay prevailing wage rates to municipal employees engaged in construction work.

Letter to Canavan, City of Everett, February 2, 2001.

Municipal employees engaged in horizontal (sewer) construction where there is no “building” (vertical) construction to be performed are not subject to the prevailing wage law. (Letter does not address section 27F).

Letter to Hannon, Pepperell and Groton, February 11, 1997.

### **Municipal Light Plants**

Municipal light plants subject to prevailing wage law.

Peabody Municipal Light Plant v. Attorney General et al., No. 92-3125 (Sup. Ct. 1995).

### **Northampton Airport, Inc. - Runway Work**

Runway project at Northampton Airport, Inc., a privately-owned airport, the runway of which is available for public use, where work is funded through state appropriation but privately managed, not subject to M.G.L. c. 149, §§26-27D.

Letter to Kerchner, Massachusetts Aeronautics Commission, April 26, 2000.

## **Off-Site Fabrication**

Off-site fabrication of tanks normally constructed at construction site, but, due to space constraints, constructed off-site and transported to construction site, covered by prevailing wage.

Letter to Eachus, Pittsburgh Tank and Tower, August 30, 1994  
Other letters on file.

## **Off-Site Preparatory Work**

Preparation work performed off-site, such as cutting manhole cover protectors, refueling equipment, or cleaning equipment, is not covered by the prevailing wage law.

Letter to Field, Office of the Attorney General, June 27, 2001.

Soil testing performed at an off-site laboratory is not covered by the prevailing wage law.

Letter to Zarbo, Office of the Attorney General, June 4, 2002.

## **Off-Site Transportation of Equipment**

The transportation of equipment and machinery to or from a public works construction site is not covered by the prevailing wage law.

Letter to Field, Office of the Attorney General, June 27, 2001.

## **Overlapping Craft Jurisdiction**

DOS has no authority under the prevailing wage law to choose between the higher or lower wage rate in classifying workers engaged in activities that fall under the jurisdiction of two different unions.

Letter to Field, Office of the Attorney General, February 21, 2001. (See also Memorandum of Understanding Between The Laborers' International Union of N.A. and The United Union of Roofers, Waterproofers and Allied Workers, dated September 8, 2003.)

Letter to Paiva, Office of the Attorney General, April 30, 2002.

Letter to Trager, Office of the Attorney General, June 4, 2002.

Letter to Zarbo, Office of the Attorney General, June 4, 2002.

Letter to Zarbo, Office of the Attorney General, June 21, 2002.

Letter to Zarbo, Office of the Attorney General, August 15, 2002.

Letter to Zarbo, Office of the Attorney General, August 8, 2003.

See also *Commonwealth v. Diversified Contracting, Inc.*, 53 Mass. App. Ct. 1111

(2002).

## **Over-the-Road**

See “**Bituminous Concrete**,” above.

## **Overtime Pay/ Blended Rate**

The Massachusetts Overtime Law, M.G.L. c. 151, §1A, governs overtime requirements; there is no separate provision for such under the state prevailing wage law. State overtime law requires time and one-half pay for all covered, non-exempt workers when their hours exceed 40 hours in a given workweek. M.G.L. c. 151, §1A. An employee’s workweek must be a fixed and regularly recurring period of 168 hours - seven consecutive days.

Letter to Castle, National Metering Services, Inc., November 7, 2005.

Employees who work overtime during a work week that includes both prevailing and non-prevailing wage hours shall be paid an overtime rate based on the weighted average of the straight-time rates of pay. Where an employee works at two or more different types of work in a single work week, for a single employer, for which different straight-time rates of pay (not less than minimum wage) have been established, his/her regular hourly rate of pay for that week is the weighted average of such rates. The regular hourly rate for that employee is determined by adding together all earnings for the week and dividing this total by the number of hours worked at all jobs.

Letter to Chandler, Boston, MA, November 27, 2001.

When calculating overtime for public works projects, the regular hourly rate on which to base overtime pay is the “base” rate of pay, i.e. the total prevailing wage rate minus any allowable deductions actually taken by the employer.

Charles, et al., v. Roads Corp., No. 98-1380 (Sup. Ct. 1999).

Letter to J. Higgins, Patterson Smith Associates, December 19, 1997.

Under state law, employers are only required to pay overtime for hours worked in excess of forty hours in a given workweek. M.G.L. c. 151, §1A.

Letter to Chandler, Boston, MA, April 2, 2002.

## **Owner-Operator/Independent Contractor Exemption**

Unless hauling gravel or fill, legitimate owner-operators and independent contractors not subject to M.G.L. c. 149, §§26-27H, in that, only employees must be paid prevailing wage.

Letter to Collins, Town of Franklin, March 10, 2000.

## **Painting**

See “Overlapping Craft Jurisdiction,” above.

## **Painting (New Construction)**

On a public work construction project, if 30 percent or more of surfaces to be painted are new construction, the appropriate wage category to be used is the new applicable paint rate.

Letter to Morrissey, August 24, 2000.

## **Paving**

Paving and other road repairs subject to the prevailing wage law.

27A Decision, Town of Falmouth, 1995.

See “Overlapping Craft Jurisdiction,” above.

## **Payroll Reports; Weekly; Certified**

For public records request, the town is not permitted to withhold home addresses and salaries contained in certified payrolls. The Town may withhold all material referencing family or marital status and all social security numbers.

Letter to Palmer, Deutsch, Williams, Brooks from Francis Gould, Public Records Division of the Commonwealth of Massachusetts, Secretary of States Office, October 6, 2000.

Certified weekly payroll reports are not required when all tasks performed are not covered by the prevailing wage law, e.g. only bulb and photo cell replacement work on street lights. However, an awarding authority may, as a matter of contract, impose a similar reporting requirement for its own monitoring or auditing purposes.

Letter to O'Donnell, International Brotherhood of Electrical Workers, November 18, 2003.

## **Pension Deductions**

See “Deductions,” above.

## **Pier and Dock Construction**

See “Pile Drivers - Classification,” below.

## **Pile Drivers - Classification**

The pile drivers occupational classification covers pier and dock construction including the underpinning (such as piles) and all components up to and including the deck. Work above the deck falls within the various occupational classifications utilized on construction projects, generally.

Informal agency opinion given to Pires, MassPort, November 13, 2000.

## **Pipelayer - Classification**

Installers of underground natural gas pipes are classified as Pipelayers. Workers who perform pipe work in streets and across sites to buildings and other structures are classified as pipelayers.

Letter to Langone, Langone Pipeline Utility, October 21, 2002.

Letter to Mathews, Westfield Gas & Electric, November 15, 2002.

## **Playground Installation**

Prevailing wage schedules do not include a classification for “playground contractor” or “playground installer.” The appropriate wage would be determined by the activity performed, e.g. a contractor performing carpentry work must be paid the carpenter wage rate.

Letter to Salazar, International Playground Contractors Association, May 20, 2005.

## **Plumber/Pipefitters - Classification**

Prevailing wage schedules issued by DOS do not distinguish between residential and commercial plumber job classifications because no operative collective bargaining agreements in Massachusetts contain separate classifications for such work.

Letter to Castle, National Metering Services, Inc., November 7, 2005.

Work involving installing hangers to hang pipe, making pipe connections on the ground, and handing pipe to the fitters fall within the craft jurisdiction of plumber/pipefitter.

Letter to Trager, Office of the Attorney General, June 4, 2002.

Letter to Mathews, Westfield Gas & Electric, November 15, 2002.

Pipefitter is the correct occupational classification for workers who perform pipe work inside buildings and other structures.

Letter to Langone, Langone Pipeline Utility, October 21, 2002.

Plumber/Pipefitter is the correct occupational classification for workers who install pipe to ground-mounted, outdoor condensing units on exterior mounting pads, install new evaporators,

and drain lines and controls in connection with replacement of water-cooled refrigeration equipment for walk-in coolers and freezers. Removal of old refrigeration equipment appears to fall within an area of overlap between the plumber/pipefitter and laborers' unions.

Letter to Zarbo, Office of the Attorney General, August 8, 2003.

See "Overlapping Craft Jurisdiction," above.

### **Pneumatic Compactor Operators/Roller Operators - Classification**

Despite argument of a contractor that operators of pneumatic compactors are substantially different than operators of other compactors, tasks are substantially akin to several duties covered by the International Union of Operating Engineers.

Letter to Moschos, Mirick O'Connell, April 6, 1995.

### **Private Development - Land Leased from a Public Agency**

Private development project on land leased from public agency not subject to prevailing wage law.

Letter to Salomon, Eggleston Square Development, Roxbury, October 10, 1995.

### **Public Bidding Law**

Contract exempt from public bidding statutes not necessarily exempt from the prevailing wage law.

Letter to Turchinetz, April 22, 1999.

Contract subject to public bidding law not necessarily covered by prevailing wage law.

27A Decision, Central Artery/Tunnel Engineering Field Surveying Service Contract, 1995.

### **Public Entities and Quasi-Public Entities**

The South Shore Tri-Town Development Corporation, created by Chapter 301 of the Acts of 1998, is subject to the requirements of the prevailing wage law.

Letter to Milanoski, South Shore Tri-Town Development Corporation, March 22, 2001.

See "Commissions," above.

### **Ready-Mix Concrete Drivers**

Off-site work not covered for ready-mix drivers on projects for which a prevailing wage schedule dated on or after August 22, 2001 has been issued. On-site work is covered.

27A Decision, MHD Contract for Resurfacing and Related Work, District 2, August 21, 2001.

Dengen Policy, June, 1993. (Rescinded by 27A Decision issued on August 21, 2001.

27A Decision, Lakeville Read-Mix, Inc. and A. Graziano, 1995.

See Construction Industries of Mass. v. Commissioner of Labor and Industries, 406 Mass. 162 (1989).

Letter to Kelley, Segal, Roitman & Coleman, MetroWest Tunnel, April 3, 1998.

Ready-Mix Concrete Driver is the correct occupational classification for drivers who deliver ready-mix concrete.

Letter to Langone, Langone Pipeline Utility, October 21, 2002.

## **Repairs**

DLI has authority to construe term “alteration” in the definition of “construction” in section 27D to include repairs to public buildings.

27A Decision, Appeal of Local 3 of the wage rates and classifications for maintenance/repair contract for the Boston Public Library, 1988.

## **Road Maintenance and Repair Work**

Road maintenance and repair work pursuant to municipal public works contracts constituted construction of public works.

Felix A. Marino Co. v. Commissioner of Labor and Industries, 426 Mass. 458 (1998).

## **Roof Repairs/Installation**

In setting rates for work on metal roofs, DOS looks to the collective bargaining agreements from the United Roofers union and the Sheet Metal Workers union.

Letter to Orrell, City of Worcester, March 26, 1999.

See “**Warranty Work**,” below; and “**Overlapping Craft Jurisdiction**,” above.

See also Memorandum of Understanding Between The Laborers’ International Union of N.A. and The United Union of Roofers, Waterproofers and Allied Workers, dated September 8, 2003.

## **Salaried Work**



When a salaried supervisor for a construction company performing public works projects in Massachusetts also performs carpentry work on these jobs, s/he must be paid the applicable prevailing wage for this work. However, an employer may meet this obligation if the weekly salary is sufficient to ensure full payment of the prevailing wage for all such hours worked.

Letter to Verissimo, December 10, 2003

### **Septic Systems**

Improvements made to septic systems under the Title V Program not subject to the prevailing wage law.

Letter to Tempesta, EOCD, September 29, 1995.

Work that entails metering the appropriate quantity of methanol into a septic system and extracting a sample for testing does not constitute an addition to or alteration of a public work; therefore, the state prevailing wage law does not apply to this type of work.

Letter to Zannelli, Seekonk Public Schools, October 21, 2003.

### **Sewer Pipes - Relining**

The occupational classification of “**Pump Operator (Dewatering, Other)**” shall be used for the following task on a covered sewer pipe relining project:

- Operation of a pump with an attached six-inch intake and discharge hose. The pump is used in the catch basin to keep the pipe dry while the pipe is being relined.

The occupational classification of “Steam Boiler Operator” shall be used for the work of tending to a boiler that is mounted on a truck and used to heat hot water, which is required in the relining process.

Letter to Klubock, Office of the Attorney General, October 14, 2003.

### **Site Support Services**

See “**Environmental Clean-up**” above.

### **Soil Density Testing**

Prevailing wage law applies to on-site soil density testing since all on-site activities associated with soil exploration are covered.

Letter to Zarbo, Office of the Attorney General, June 4, 2002.

## **Sprayed-on Fireproofing**

See “Overlapping Craft Jurisdiction,” above.

## **Start Time**

“Start time” (when payment of prevailing wage is required to begin for workers engaged in public works construction activities during their workday):<sup>1</sup>

General rule: Payment of prevailing wage begins when the worker begins his/her workday at the public works site.

Special case: Truck Drivers

Delivery/Materialmen not engaged in work on the public work site are not “engaged” in a public works project; therefore, are not entitled to prevailing wage.

Drivers hauling “gravel and fill” must be paid prevailing wage from the point at which they arrive at the work site, or arrive at a location where gravel or fill is picked up for delivery to the public work site, whichever occurs earlier, provided site delivery directly follows pick-up.

Drivers of bituminous and ready-mix concrete must be paid prevailing wage from the point at which the driver arrives on the public work site.

Letter to Montenegro, Independent Asphalt Corp., May 17, 2000.

Letter to Shannon, Shannon Law Associates, Inc., March 7, 2002.

See also 27A Decision, MHD Contract for Resurfacing and Related Work, District 2, August 21, 2001.

Construction Industries of Mass. v. Commissioner of Labor and Industries, 406 Mass. 162 (1989).

Dengenis Policy, June, 1993. (Rescinded by 27A Decision issued on August 21, 2001.)

## **Street Light Maintenance**

In a scope of work encompassing various street light repair and maintenance activities, photo cell and light bulb replacement is not construction of public works.

Letter to Shortsleeves, August 22, 2000.

Letter to Place, International Brotherhood of Electrical Workers, January 29, 2002.

Letter to Place, International Brotherhood of Electrical Workers, December 6, 2002.

Letter to Place, International Brotherhood of Electrical Workers, January 9, 2003.

Letter to O'Donnell, International Brotherhood of Electrical Workers, November 18, 2003.

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<sup>1</sup> See also G.L. c. 151, the Massachusetts Minimum Fair Wage Law, for statutory minimum wage requirements.

Workers who repair street lights must be paid in accordance with the occupational classifications issued for the project on the prevailing wage schedule.

Letter to O'Donnell and Place, International Brotherhood of Electrical Workers, April 19, 2002.

### **Surety (Performance of Work)**

The surety, and its contractor, were obligated to perform the principal's original contractual obligations. One of those contractual obligations is the requirement to pay wage rates as prescribed in the prevailing wage schedule. Therefore, that wage schedule is still in effect for the project.

Letter to Winters, Consigli Construction Co., Inc., April 6, 2004.

### **Teamsters**

See "Truck Drivers," below.

### **Telecommunications Technician**

The correct occupational classification for workers who install conduit for telecommunications system wiring is telecommunication technician. **Note:** This letter references an expired collective bargaining agreement. The subsequent agreement made changes to the work covered by telecommunications technicians.

Letter to Giurleo, August 8, 2003.

See "Fire Alarms," above.

### **Temporary Work**

Installation of temporary boilers to provide alternative source of heat resulting from loss of main boiler is an "alteration of a public work" subject to the prevailing wage law.

Letter to Robinson, ACME Boiler Rental, February 4, 1998.

### **Tender**

As described by the relevant (Laborers') collective bargaining agreement, a "tender" classification tends to the needs of journey persons.

Letter to Gagliastro, Worcester, December 24, 1998.

See "Waterproofing Masonry Work," below.

## **Territorial Jurisdiction**

DOS follows territorial jurisdictions of collective bargaining agreements when setting rates.

Letter to Fengler, Asplundh, Inc., April 25, 1994.

## **Testing and Inspection**

See “Fire Alarms,” above.

See “Electrical Equipment Testing,” above.

## **Threshold Dollar Amount**

There is no dollar threshold for applicability of prevailing wage law.

Letter to Fengler, Asplundh Tree Expert Co., November 1, 1999.

## **Traffic Barriers**

See “Barrier Transport Vehicle” under M.G.L. c. 27F, below.

## **Traffic Markings**

See “Line Painting,” above.

## **Transportation of Equipment, Off-Site**

See “Off-Site Transportation of Equipment,” above.

## **Tree Trimming**

Tree trimming and tree removal projects are covered by the prevailing wage law.

Letters to Fengler, Asplundh, December 6, 1994, February 19, 1996, November 1, 1999.  
Letter to Ferriter, Taunton, May 16, 1990.

## **Truck Drivers**

Truck drivers who move excavated material at a public works construction site and truck drivers who deliver stone and gravel to a public works construction site, are covered by the prevailing wage law.

Letter to Rafferty, P.E., February 24, 2003.

See “**Bituminous Concrete**” and “**Ready-Mix Concrete Drivers**,” above.

### **Utility Work-Road Work Performed in Connection with**

Repair of roadways following installation of cable underneath them for private utility or cable television companies, performed solely for the benefit of, at the direction of, and using funding provided by private utility or cable television company, not covered by the prevailing wage law.

Letter to Early and Marino, Felix A. Marino, Co., August 29, 1994.

Excavation work on public property to install conduit that will accommodate utility lines is subject to the prevailing wage law in some cases. Private utility companies are not exempt from the prevailing wage law when performing public works construction.

Letter to Burger, Foundation For Fair Contracting, July 6, 2001.

### **Utility Work-Street Lights**

See “**Street Light Maintenance**,” above.

### **Warranty Work**

Warranty work, in some cases, not covered by the prevailing wage law.

Letter to White, City of Lynn, July 21, 1994.

Roofing contractor’s replacement of membrane under provisions of manufacturer’s warranty not subject to the prevailing wage law.

Letter to White, City of Lynn, July 21, 1994.

### **Waste Water Pump Operators - Classification**

Waste water pump operators working at construction sites are subject to rates set from the Operating Engineers collective bargaining agreement (Local 4 or Local 98).

Letter to Mard, Office of the Attorney General, April 9, 1997.

### **Water Meter Installation**

Installation of water meters, even in private residences, is subject to the prevailing wage law.

DLI Policy Statement, July 9, 1993.

When water meter installers drive from site to site during the day, attend trainings or meetings,

or drop off door knob notices, such work does not constitute an addition to or alteration of a public work; therefore, prevailing wage is not required. However, state minimum wage law would require the payment of at least the statutory minimum wage for such work required by an employer. See 455 C.M.R. §§2.01, 2.03(4).

Letter to Travis, Mass Installation, Inc., January 21, 2004.

### **Waterproofing Masonry Work**

Workers who install waterproofing materials must be classified as either “Bricklayers” or “Roofers” but not as “Laborers.”

To help inform your decision for enforcement purposes, I would suggest that the following tasks are included under the definition of installation: the application of waterproofing materials to other building components; the measuring, cutting, mixing, and preparing of all waterproofing materials; and the connecting, positioning, sealing, and finishing, of all waterproofing materials. (See copies of the collective bargaining agreements already provided to your Office.)

The question about whether to use the “Bricklayer/Mason” rate or the “Roofer” rate is, in my opinion, more difficult on unique structures such as ventilation buildings where the masonry and roofing components may not be clearly distinguished from one another. In the event that such a structure has a roof, installation of waterproofing materials on the roof should be paid the “Roofer” rate. Waterproofing work performed on other building components, such as walls, should be paid at the “Bricklayer/Mason” rate. When waterproofing work is performed in areas located between the walls and a roof, either rate could reasonably apply. In that event, DOS reiterates its position that we will not choose between the higher and lower rate in classifying workers engaged in activities that fall under the jurisdictional ambit of two different unions.

Letter to Zarbo, Office of the Attorney General, August 18, 2004.

As described by relevant Bricklayers collective bargaining agreement, waterproofing, damproofing, and caulking all brick, masonry, stone and artificial masonry is work of the “bricklayer/mason/waterproofer/plasterer.”

Letter to Gagliastro, Worcester, December 24, 1998.

Waterproofer is the correct occupational classification for workers who install membrane waterproofing, gas barrier/waterproofing membrane, bituminous damproofing, elastomeric membrane flashing, and sealants in association with Masonry construction.

Letter to Zarbo, Office of the Attorney General, January 9, 2003.

### **Western Massachusetts Regional Library System**

Construction of a new building by the Western Massachusetts Regional Library System, Inc., a non-profit corporation, is not subject to M.G.L. c. 149, §§26-27H.

Letter to Ramsay, WMRLS, Inc., March 14, 2002.

## **PREVAILING WAGE, Engaging in Public Works, M.G.L. c. 149, §27F**

### **Barrier Transport Vehicle**

Movement of traffic barriers several times a day with a BTV is subject to section 27F of the prevailing wage law.

27A Decision, MHD H.O.V. Lane Operation, 1995.

BTV operators should be paid the “Two Axle Equipment” occupational classification.

Letter to McGrath, MHD, November 10, 1999.

### **Cherry Pickers**

See “Holiday Lights,” below.

### **Deductions**

Employer deductions from prevailing wages paid under M.G.L. c. 149, §27F may include those for medical, dental, life and disability benefits, but not those for the employer portion of FICA or other social security payments, holidays, personal days, vacation days, uniforms, safety boots, or pension benefits.

Commonwealth v. Waste Management, Inc., No. 96-1640F (Sup. Ct. 1999)\*  
[Compare Hicks, et al., v. Roads Corp, et al., No. 98-01380 (Sup. Ct. 1999)\*, holding that holiday pay may be deducted from prevailing wages. DOS follows rule set forth in Waste Management rather than in Roads].

### **Holiday Lights**

The installation and removal of holiday lights using a bucket truck or cherry picker falls within the activities covered by Section 27F.

Letter to Place, IBEW Local 104, January 9, 2003.

### **Grinding Services (Yard Waste and Brush)**

Contract for grinding services (yard waste and brush) is subject to the prevailing wage law, section 27F.

Letter to Swete, South Shore Reg. Refuse Disposal Board, April 12, 1996.

### **Landfill Operation**

Public landfill is “public work” for purposes of public bidding law (M.G.L. c. 30, §39M).



DLI v. Town of Pepperell, 26 Mass. App. Ct. 1103 (1988) (Rule 1-28 opinion).

Operation of a municipal landfill and residential recycling drop-off center – functions commonly performed by city or town employees – would generally fall under the ambit of Section 27F, based on the reasoning offered in the Perlera v. Vining Disposal Service, Inc., 47 Mass. App. Ct. 491, 495 (1999) and Commonwealth v. W. Barrington Company, Inc., 5 Mass. App. Ct. 416 (1977).

Letter to Sheridan, Sheridan & Sheridan, LLP, May 12, 2004.

See “Private Funds - Landfill Closure,” above.

A municipally run landfill operating under consent order requiring it to accept private construction debris in order to facilitate closure, where no public funds are expended, not “public works” for purposes of section 27F.

Letter to Joyce, Topsfield Landfill, October 17, 1997.

The accelerated closure of a landfill, where non-municipal waste will be accepted, and no public money will be accepted, not “public works” for purposes of section 27F.

Letter to Braggs, Williamstown Landfill/Metal Disposal, April 8, 1996.

See “Trash Hauling,” below.

### **Lease, Rental or Other Arrangement**

Lease or rental agreement not required for section 27F applicability where bid specifications require contractor to provide vehicle.

27A Decision, Waste Stream Environmental Inc., and N-Viro International Corp., 1995.

Contract for services of an independent contractor does not fall outside the purview of section 27 simply because it is a service contract rather than a lease, rental, order or requisition; service contract is one of the “other arrangements” referred to in the statute.

Perlera v. Vining Disposal Service, Inc., 47 Mass. App. Ct. 491 (1999).

### **Municipal Employees**

Municipal employees who operate rented equipment not subject to section 27F.

Letter to Purcell, Mass. Building Trades Council, October 11, 1989.

### **Service Contract**

See “Lease, Rental or Other Arrangement,” above.

### **Sludge Hauling**

Transportation and disposal of sludge from wastewater treatment facility owned by DPW does not constitute being “engaged in public works” because practices regarding disposal are recent in origin and largely carried out by specialized private contractors.

27A Decision, Waste Stream Environmental and N-Viro International, 1995.

### **Snow Removal**

M.G.L. c. 149, §27F does not categorically apply to snow plowing, sanding, salting, ice removal, and related activities and DOS will not issue prevailing wage rate schedules for these activities.

Letter to Beckwith, October 15, 1999.

### **Street Sweeping**

Street sweeping constitutes “engaging in public works” for purposes of section 27F.

Commonwealth v. W. Barrington Co., Inc., 5 Mass. App. Ct. 416 (1977).

### **Territorial Jurisdiction**

Rate schedules issued under section 27F are subject to the territorial jurisdiction of the appropriate collective bargaining agreement.

Letter to McCourt, June 20, 1995.

### **Towing Services**

Tow truck operators are not “engaged in public works” and, therefore, are not covered by section 27F.

Letter to Mullen, MHD, October 16, 1995.

### **Transfer Station-Gate Attendant**

Gate attendant who checks incoming vehicles for current permits and directs customers to appropriate container for waste and recyclable disposal not subject to the prevailing wage law.

Letter to Kennedy, October 2, 2002.

### **Trash Hauling**

Truck drivers who transport solid waste or recycling materials from a municipal landfill or recycling center to a market site for disposal must be paid the prevailing wage.

Letter to Sheridan, Sheridan & Sheridan, LLP, May 12, 2004.

(Former agency position: See Letter to Oakes, Needham, November 1, 1999.)

“Shakers”, workers who operate equipment from back of trash hauling truck, are “operators” of “other vehicles and equipment” for purposes of section 27F, and are therefore covered by the prevailing wage law.

Perlora v. Vining Disposal Service, Inc., 47 Mass. App. 491 (1999).

## **PREVAILING WAGE, Moving Office Furniture, M.G.L. c. 149, §27G**

### **Moving Office Furniture - School Furniture**

Moving school room furniture is not moving “office furniture” as contemplated by section 27G, and is therefore not subject to the same.

Letter to Turner, Brookline, October 11, 1996.

### **Moving Office Furniture - Modular Work Stations**

Moving modular work stations is subject to section 27G, because such workstations are akin to office furniture.

Letter to Tempesta, DHCD, October 4, 1999.

### **Moving Office Furniture – Public Employees**

Division of Employment and Training employees who move and load office furniture to be transported to a scrap/recycling facility not subject to the prevailing wage law.

Letter to Rousseau, DET, March 13, 2003.

## **PREVAILING WAGE, Cleaning and Maintenance of Office Space – M.G.L. c. 149, §27H**

### **MBTA**

MBTA not “commonwealth” for purposes of section 27H, and is therefore not subject to this provision of prevailing wage law.

SEIU v. MBTA, No. 88-7299 (Sup. Ct. 1990).

### **Cleaning and Maintenance - Applicability**

Lynn Water and Sewer Commission deemed to be an instrumentality of the Commonwealth and subject to the prevailing wage law for cleaning and maintenance, section 27H.

Letter to Vitali, Lynn Water and Sewer Commission, October 22, 1996.

### **Cleaning and Maintenance – Classifications**

When determining occupational classifications that appear on prevailing wage schedules for janitorial services, DOS obligated to use “certain trades and occupations” appearing in “collective agreements”, in this case the collective agreements representing the Service Employees International Union (SEIU).

Letter to Sullivan, SEIU, June 13, 1998.

## **PREVAILING WAGE, Housing Authorities, M.G.L. c. 121B, §29**

### **Federal Funds**

Rates established by DOS under M.G.L. c. 121B, §29 are inapplicable to federally-aided projects.

Letter to Bukowski, Auburn Housing Authority, April 12, 1995.

Commissioner of Labor & Industries v. Lawrence Housing Authority, 358 Mass. 202 (1970).  
Commissioner of Labor & Industries v. Boston Housing Authority, 345 Mass. 406 (1963).

### **Establishing Wage Rates**

Receiver of the Boston Housing Authority v. Commissioner of Labor & Industries, 396 Mass. 50 (1985).

Commissioner of Labor & Industries v. Worcester Housing Authority, 8 Mass. App. Ct. 303 (1979).

Commissioner of Labor & Industries v. Boston Housing Authority, 345 Mass. 406 (1963).

### **Health and Life Insurance Plans**

Housing authorities do have to offer to make contributions to health and life insurance plans when the housing authorities do not offer health and life insurance through the Group Insurance Commission.

Letter to Zenkus, Worcester, MA, October 29, 2001

## **PREVAILING WAGE, School Bus Drivers, M.G.L. c. 71, §7A**

### **School Bus Drivers**

Chapter 71, § 7A covers the transportation of students to and from school, special education transportation, school-related athletic events, field trips, all other school-related activities, time spent performing vehicle safety checks, fueling, and travel between routes and garages, parking lots, and other places where buses are stored.

Letter to Jones, Office of the Attorney General, April 10, 2001.

Letter to Blair, June 9, 2001.

Letter to Jones, Office of the Attorney General, February 20, 2002.

School bus drivers are not required to be paid prevailing wage rates on chartered trips that are not part of a school bus transportation contract issued pursuant to M.G.L. c. 71, §7A. The appropriate minimum wage would be the statutory minimum wage established by the MA Minimum Fair Wage Law, G.L. c.151, §1. Letter to Rooke, April 23, 2002.

Letter to Rooke, April 23, 2002.

Shawsheen Valley Regional Vocational Technical School District school bus drivers are required to be paid prevailing wage rates based on wage rates established for cities and towns located inside the M.B.T.A. jurisdictional area.

Letter to Mandel, Ropes & Gray, March 13, 2003.